

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

KENNETH WATFORD,)	
)	
Petitioner,)	
)	CAUSE NO. 2:20-cv-0032-JPH-MJD
v.)	
)	
B. LAMMER, WARDEN,)	
)	
Respondent.)	

MOTION TO DISMISS PETITIONER'S 28 U.S.C. § 2241 PETITION

Comes now the United States of America, by counsel, and moves to dismiss the Petitioner's 28 U.S.C. § 2241 motion.

The United States believes this case was opened erroneously and his filings should have been filed in his case under Cause No. 2:18-cv-325-JPH-DLP. The United States submits the following to support its claim.

On July 19, 2018, Watford filed a writ of habeas corpus under 28 U.S.C. § 2241. *See Watford v. J.R. Bell*, Cause No. 2:18-cv-325-JPH-DLP. Watford claimed that the evidence used to convict him was false and he should be released. (Case No. 325 Dkt. 1.) On August 13, 2018, this Court ordered Watford to show why his motion should not be dismissed as it did not appear to make him eligible to proceed under § 2241. (Case No. 325 Dkt. 6.) On September 14, 2018, Watford filed a response claiming that he was actually innocent because the evidence used to convict him was false. (Case No. 325.

Dkt. 7.) On October 2, 2018, this Court denied Watford's § 2241 motion finding his claim that the factual basis underlying his conviction and some of the evidence on which he was convicted were false failed to show that § 2255 was improper. (Case No. 325 Dkt. 8.) Final Judgment was entered on the same date. (Case No. 325 Dkt. 9.)

On October 12, 2018, Watford filed a motion for reconsideration providing no new evidence or arguments. (Case No. 325 Dkt. 10.) On October 24, 2018, this Court denied Watford's motion for reconsideration explaining that Watford was not eligible for relief under § 2241 because his petition clearly did not rely on the retroactive application of a new statutory interpretation and therefore did not fall within the scope of the savings clause of 28 U.S.C. § 2255(e). (Case No. 325 Dkt. 15.)

On October 17, 2018, Watford filed a notice of appeal. (Case No. 325 Dkt. 11.) The appeal was dismissed by the Seventh Circuit. *See Watford v. Bell*, No. 18-3218 (7th Cir. 2018); (Case No. 325 Dkt. 27.)

On November 8, 2018, Watford filed a motion for permission to appeal in forma pauperis and a memorandum in support of that motion. (Case No. 325 Dkt. 16-17.) The Court denied his motion on November 21, 2018. (Case No. 325 Dkt. 21.)

On November 14, 2018, Watford filed a demand for trial by jury. (Case No. 325 Dkt. 18.) On November 19, 2018, Watford filed a motion for

release pending denial of his habeas corpus ad subjiciendum review which was denied by this Court on November 29, 2018. (Case No. 325 Dkt. 19, 26.)

On November 13, 2018, Watford filed another notice of appeal on the denial of his § 2241 petition and that was again dismissed by the Seventh Circuit on December 19, 2018. *See Watford v. Bell*, No. 18-3490 (7th Cir. 2018); (Case No. 325 Dkt. 30.)

On December 27, 2018, Watford filed a motion to vacate the dismissal of his § 2241 and on January 7, 2019 filed an order to produce. On January 15, 2019 and February 5, 2019, Watford filed motions for status of pending motions. (Case No. 325 Dkt. 33, 34.) His motion to vacate and order to produce were denied on May 14, 2019. (Case No. 325 Dkt. 32, 33, 36.)

On June 3, 2019, Watford again filed a notice of appeal of the denial of his § 2241 petition. (Case No. 325 Dkt. 37.)

On June 20, 2019, Watford again filed a motion for reconsideration of his § 2241 petition. (Case No. 325 Dkt. 43.) The Court denied the motion and warned Watford that any additional motions to reconsider its ruling on Watford's petition will be considered filed for improper purposes and order Watford to show cause why he should not be sanctioned. (Case No. 325 Dkt. 45.)

Undeterred, Watford filed a motion to proceed on appeal in forma pauperis which was denied on August 16, 2019. (Case No. 325 Dkt. 48, 49.)

On October 2, 2019, Watford filed a motion affirming his sentence which was denied along with a warning that future post judgment motions would be denied. (Case No. 325 Dkt. 50, 51.)

In the midst of Watford's many filings, he filed a motion on January 17, 2020 without his cause number. This motion which pertained to his case in 2:18-cv-325 was opened as a new § 2241 petition. (Dkt. 1.) However, this motion merely provided more information regarding his issues presented in his previous case. (*Id.*) Watford makes no additional or new claims or arguments, he merely adds that a conviction was expunged in 2012 to his previous case. (*Id.*)

Thus, his filing should have been filed in Cause No. 2:18-cv-325. Otherwise, permitting Watford to open a new case number would permit him to evade this Court's order regarding potential sanctions for additional filings. (Case No. 325 Dkt. 45.) In content and form, Watford's motion is a continuation of the same litigation as Cause No. 2:18-cv-325. He has made no new claims or arguments.

This case should be summarily dismissed.

If, of the other hand, the Court disagrees, the government requests 45 days to respond substantively to Watford's motion.

Respectfully submitted,

JOSH J. MINKLER
United States Attorney

By: s/Brian Reitz
Brian Reitz
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing upon the
Petitioner herein by electronically filing and mailing a copy thereof to the
following on July 28, 2020:

Kenneth Watford
Reg. No. 56252-037
USP – Terre Haute
Inmate Mail/Parcels
P.O. Box 33
Terre Haute, IN 47808

By: s/Brian Reitz
Brian Reitz
Assistant United States Attorney